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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,302	01/02/2004	Guilherme L. Indig	032026-0769	8802
23524 7590 01/25/2007 FOLEY & LARDNER LLP 150 EAST GILMAN STREET P.O. BOX 1497 MADISON, WI 53701-1497			EXAMINER GRAFFEO, MICHEL	
			ART UNIT	PAPER NUMBER
			1614	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/751,302

Applicant(s)

INDIG, GUILHERME L.

Examiner

Michel Graffeo

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Action

Claims 1-5 and 7-8 are examined.

Applicant has amended claims 1 and 7-8, canceled claim 6 and provided arguments for the patentability of claims 1-5 and 7-8 in the response filed 22 August 2006.

Applicant's arguments, see response, filed 22 August 2006, have been fully considered and are persuasive to the extent that the Double Patenting rejection in light of the approved Terminal Disclaimer has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiedorowicz et al. (cited by Applicant on the IDS filed 20 May 2004 page 2 of 6, #12) in view of Reed et al. The Tuor-inhibitory Activity of Diaryl-and Triarylmethane Dyes. Cancer Research (1953), 13, 130-6 in view of Indig G.L (cited by Applicant on the IDS filed 1 December 2005 page 3 of 6, #6).

Art Unit: 1614

Fiedorowicz discloses (see abstract, pages 857-858) a method of purging leukemia cells from human blood cells by contacting the mixture with a photoreactive compound and exposing it to radiation to photoactivate the compound.

Fiedorowicz does not show the compound of the instant claims.

Reed et al. teach that Crystal Violet, for example, has anti-tumor properties and of 235 dye compounds was among the most reactive anti-tumor compounds (see page 135) as treated in *in vivo* experimentals.

Indig teaches that photoreactive compounds such as Crystal Violet (see page 233) are efficacious in the treatment of neoplastic diseases.

One of ordinary skill in the art would have been motivated to combine the above references and as combined teach the claimed invention as claimed. One of ordinary skill in the art would have been motivated to combine the above references primarily because Indig teaches that photoreactive compounds such as Crystal Violet are efficacious in the treatment of cancer. Fiedorowicz further teaches specific cancers that are treatable with photoreactive compounds. And finally, both Reed and Indig teach that Crystal Violet has anti-cancer properties. Thus, the combined references teach and make prima facie obvious how to use the claimed invention at the time that it was made.

Response to Arguments - 35 USC § 103

Applicant's arguments filed 22 August 2006 have been fully considered but are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually

Art Unit: 1614

where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In particular, in response to Applicant's argument that Indig teaches insufficiency of crystal violet, Examiner points to page 235 which teaches that the compounds "studied here display behavior close to the "ideal" for more effective photosensitizers because they strongly absorb at relatively long wavelengths...and...are expected to display good cell-penetrating properties."

Applicant then argues that Reed does not teach crystal violet as a photochemotherapeutic agent. Again, each reference does not need to teach all the elements in a claim, but as combined the references must teach and/or suggest each limitation.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would have been motivated to combine the above references primarily because Indig teaches that photoreactive compounds such as Crystal Violet are efficacious in the treatment of cancer. Fiedorowicz further teaches specific cancers that are treatable with photoreactive compounds and to that extent teaches that cancers are

Art Unit: 1614

treated with photoreactive compounds. Although Applicant argues that Fiedorowicz does not teach a compound with properties that are necessarily or expressly similar to crystal violet, the reference teaches the efficacy and standard use of photoreactive compounds in general for the treatment of cancer. And finally, both Reed and Indig teach that Crystal Violet has anti-cancer properties. Thus, the combined references teach and make prima facie obvious how to use the claimed invention at the time that it was made.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1614


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michel Graffeo whose telephone number is 571-272-8505. The examiner can normally be reached on 9am to 5:30pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

19 January 2007

MG


ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER